

UNITED STATES OF AMERICA
MERIT SYSTEMS PROTECTION BOARD

DALE D. CLARK

v.

DEPARTMENT OF STATE

Docket No.

DC752S09005

OPINION AND ORDER

Petitioner was suspended by the Agency for International Development, Department of State, Washington, D.C. The notice of decision dated July 12, 1979, stated "that suspension for 14 days without pay or duty status is justified. Accordingly, your suspension will begin on Monday July 16, 1979, and end August 2, 1979. You should report to work on Friday August 3." Thereafter, the agency, by letter dated July 24, 1979 amended the period of suspension to July 16, 1979 through July 29. Petitioner was notified of the amendment by telephone communication but declined to return to work due to his absence from the area for the purpose of attending certain meetings.

On appeal to the Washington, D.C. Field Office of the Board, petitioner asserted that he was suspended for more than 14 days, and that he was therefore entitled to those adverse action rights afforded by 5 U.S.C. 7511. He also contended that he was not accorded proper notice of the charges against him as provided in the Negotiated Agreement between the agency and the American Federation of Government Employees (AFGE).

The presiding official found that petitioner received due notice under the Negotiated Agreement and was suspended for 14 calendar days. He concluded that petitioner was therefore not entitled to appeal rights to the Board under 5 U.S.C. 7511 et seq. and dismissed the appeal for lack of jurisdiction.

This petition for review dated December 18, 1979, is based upon the alleged erroneous interpretation by the presiding official of Article XXIV, section 6, of the Negotiated Agreement. The agency, in opposition to the petition for review, contended that petitioner failed to state the specific law, rule or regulation he alleged was erroneously interpreted, citing only the Negotiated Agreement. It also argued that petitioner has submitted no new and material evidence and that therefore the petition did not meet the criteria for review.

The weight of the evidence before us indicates that the agency intended to impose no more than a 14-day suspension. It was stated

on the Notification of Personnel Action Form SF-50 that the effective date of the suspension was July 16, 1979, and that the period of suspension was not to exceed July 29, 1979. The Form SF-50 was also dated July 16, 1979. In the notice of decision, petitioner was informed that he was being suspended for a period of "14 days" and was apprised, consistent with agency regulations where a 14-day or less suspension is imposed, of his appeal rights under the Agency Administrative Grievance Procedure. No appeal rights to the Merit Systems Protection Board were given. Thus, except for the error in computation contained in the letter of decision, the record reflects a clear intention by the agency to effect a 14-day suspension.

Because the agency in writing amended the computation error in the letter of decision prior to the expiration of the 14 calendar-day period, and such action was communicated to petitioner during that time frame, a 14-day suspension under 5 U.S.C. 7501 et seq. was effected, and hence, petitioner was not entitled to the adverse action rights conferred by 5 U.S.C. 7511 et seq.

Therefore, as the presiding official concluded, the Board lacked jurisdiction to entertain the appeal. In view of the foregoing finding, we decline to consider the issue of proper notice under the Negotiated Agreement. Consequently, the petition does not meet the criteria for review set forth in 5 C.F.R. 1201.115 (1979).

Accordingly, the petition for review is DENIED.

This is a final decision of the Merit Systems Protection Board. Petitioner is hereby advised of his right to appeal this decision to the United States Court of Claims or the appropriate circuit of the United States Court of Appeals, provided such appeal is filed within 30 calendar days of receipt of this decision.

For the Board:

ERSA H. POSTON.

Washington, D.C., August 22, 1980